

SECTION-BY-SECTION ANALYSIS OF THE NOAA SEXUAL HARASSMENT AND ASSAULT PREVENTION ACT

Title I. Sexual Harassment and Assault Prevention

Section 101: Actions to Address Sexual Harassment at National Oceanic and Atmospheric Administration.

This section requires the Secretary of Commerce to develop a policy on the prevention and response to sexual harassment involving NOAA employees, NOAA Corps members, and extending to all individuals who work with or conduct business on behalf of the Administration (wage mariners, scientists, students, interns, volunteers, etc.). The policy should be established within one year of enactment and include procedures to follow and awareness of harassment. The Administration shall also create a process for after-hours reporting and ensure that Equal Employment Opportunity personnel are distributed in each region of operations and at the marine and aviation centers.

Section 102: Actions to Address Sexual Assault at National Oceanic and Atmospheric Administration.

This section requires the Secretary of Commerce to develop a policy on the prevention and response to sexual assault involving NOAA employees, NOAA Corps members, and extending to all individuals who work with or conduct business on behalf of the Administration (wage mariners, scientists, students, interns, volunteers, etc.). The policy should be established within one year of enactment and include prevention measures, procedures to follow in the event of an occurrence of sexual assault, and procedures for assistance.

The Secretary shall establish victim advocates trained in matters relating to sexual assault and shall act on behalf of the victim helping to navigate the investigative, medical and recovery processes. A victim advocate shall be located in each region the Administration conducts operations and at each marine and aviation center and the Administration shall create a process for 24-hour reporting.

These requirements are closely aligned with the Department of Defense policy and procedure on prevention and response to sexual assault within the armed forces.

Section 103: Rights of the Victim of Sexual Assault.

This section provides the victim of a sexual assault the right to be reasonably protected from the accused.

Section 104: Change of Station for Victims of Sexual Assault.

This section requires timely consideration of a unit transfer or work location change to accommodate the victim of a sexual assault.

Section 105: Applicability of Policies to Crews of Vessels Secured by National Oceanic and Atmospheric Administration under Contract.

Any contract into which the NOAA enters for use of a vessel (ship, small boat, aircraft) shall include as a condition that any personnel attached to the vessel are subject to the policies

developed under section 501(a) and 502(a).

Section 106: Annual Report on Sexual Assault in the National Oceanic and Atmospheric Administration.

The Secretary of Commerce shall submit a report to Congress no later than January 15 of each year that includes the number of sexual assaults, a synopsis of each case, and the disciplinary actions taken.

Section 107: Definition.

The term “sexual assault” shall have the definition in section 920(b) of title 10, United States Code.

Title II. Commissioned Officer Corps of the National Oceanic and Atmospheric Administration

Section 201: References to the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002.

References for amendments or repeal shall be considered to be made to a section or provision of the NOAA Corps Act of 2002

Subtitle A. General Provisions

Section 211: Strength and Distribution in Grade.

This section amends 33 U.S.C. 3004 to establish the commissioned grades for officers in the NOAA Corps, and authorizes the Secretary of Commerce (Secretary) to determine the proportion of officers assigned to ranks below Lieutenant Commander. This section requires the Secretary to annually determine the number of officers authorized for service in each grade, but would protect officers from demotion, pay cuts, or separation from the service as a result of the Secretary’s determination.

Section 212: Recalled Officers.

This section amends 33 U.S.C. 3005 to require that, in determining the number of officers in each grade, officers serving in positions of importance and responsibility (33 U.S.C. 3028) and officers recalled from retirement for temporary duty (for example, during a disaster response) cannot be counted in or against the total number of authorized officers in the NOAA Corps.

Occasionally, the NOAA Corps needs to recall officers from retired status for temporary duty such as for disaster response (Hurricane Katrina, Deepwater Horizon) or to serve on personnel boards. It cannot do so if it is at authorized strength, reducing its ability to have a ‘surge’ capacity.

Section 213: Obligated Service Requirement.

The NOAA Corps currently does not have any legislative authority to bind officers to service by contract or obligation. Theoretically, an officer could receive training (costs up to \$100K, depending on type of training) and resign from the Corps shortly thereafter. The other Services require an obligated service for appointment, training, promotion, etc. of officers to ensure they receive an adequate return on investment in these categories.

This section amends the NOAA Corps Act of 2002 to authorize the Secretary to bind NOAA Corps officers to an obligation of service. It also authorizes the Secretary to seek reimbursement from officers who do not meet their obligated service requirements, and would characterize that as a debt owed to the United States. This section allows the Secretary to waive an obligation of service requirement for an officer that is not qualified for service.

Section 214: Training and Physical Fitness.

This section adds a provision to the NOAA Corps Act of 2002 to authorize the Secretary to carry out training programs and to require officers to maintain a state of physical fitness substantially equivalent to that required for officers in the U.S. Coast Guard.

Section 215: Recruiting Materials.

This section adds a provision to the NOAA Corps Act of 2002 to authorize the Secretary the use of products created as recruiting and advertising materials (such as videos or pamphlets), the additional use at public relation events.

Section 216: Charter vessel safety policy.

This section requires NOAA to develop and implement a charter vessel safety policy within one year of enactment. The policy shall address vessel safety, operational safety, and basic personnel safety requirements applicable to the vessel size, type, and intended use. The policy shall not exceed the vessel safety requirements promulgated by the Coast Guard.

Section 207: Technical Correction.

This section would amend 38 U.S.C. 101(21)(C) to correct a definition of active-duty NOAA Corps officers.

Subtitle B. Parity and Recruitment

Section 221: Education Loans.

This section adds a provision to the NOAA Corps Act of 2002 to authorize the Secretary to create an education loan repayment program for certain qualified NOAA Corps officers.

The NOAA Corps does not have the same education loan repayment recruiting incentives as the other Services. This is particularly an issue when trying to increase Corps diversity—many other organizations use these types of incentives to recruit minority students with a science and engineering background.

Section 222: Interest Payments.

This section adds a provision to the NOAA Corps Act of 2002 to authorize the Secretary to create an interest payment program for student loans of certain active-duty NOAA Corps officers.

Section 223: Student Pre-Commissioning Program.

This section adds a provision to the NOAA Corps Act of 2002 to authorize the Secretary to provide financial assistance to support tuition and other education-related costs of a currently-enrolled student if the student agrees to serve for a certain number of years as a NOAA Corps

officer upon completion of his or her educational program.

Section 224: Limitation on Educational Assistance.

Limits the total amount expended by the Secretary for educational assistance programs (sections 301, 302, 303) for NOAA Corps officers to the amount saved by the creation of the Officer Candidate rank (section 406).

Section 225: Applicability of Certain Provisions of Title 10, United States Code, and Extension of Certain Authorities Applicable to Members of the Armed Forces to Commissioned Officer Corps.

This section amends 33 U.S.C. 3071 to extend the following, additional Title 10 authorities to the NOAA Corps: prohibition on unauthorized wearing of a uniform; rules regarding wearing religious apparel in uniform; exemption for serving on certain juries; administration of the oath; benefits and services for separated members; family programs; notary service; and educational assistance.

It also gives authority to allow the Secretary to accept certain voluntary services, such as the implementation of an Ombudsman program. Ombudsman programs are intended to improve communication between the command and the family members and are volunteers and spouses of service member within the command.

Section 226: Applicability of Certain Provisions of Title 37, United States Code.

This section adds a provision to the NOAA Corps Act of 2002 to extend the following, additional Title 37 authorities to the NOAA Corps: accession bonuses for officers with critical skills; housing allowances while on field or sea duty and housing allowances for dependents of deceased members; personal spending allowances; recruiting expenses; and funeral honors duty allowances.

Section 227: Legion of Merit Award.

This section amends 10 U.S.C. 1121 to allow the officers of the NOAA Corps to receive the Legion of Merit Award.

Section 228: Prohibition of Retaliatory Personnel Actions.

This section amends 10 U.S.C. 1034 to include members of the NOAA Corps in whistleblower protections provided to members of the military.

Section 229: Penalties for Wearing Uniform without Authority.

This section would amend 18 U.S.C. 702 to include NOAA Corps officers in a provision that makes it criminal to wear a uniform without authority.

Section 230: Application of Certain Provisions of Competitive Service Law.

This section amends 5 U.S.C. 3304 to allow former NOAA Corps officers to be considered for consideration to competitive service positions.

Section 231: Employment and Reemployment Rights.

This section amends 38 U.S.C. 4303 to extend the definition of uniformed services to include

NOAA Corps officers for the purposes of employment and reemployment rights granted by Chapter 43 of Title 38.

Section 232: Treatment of Commission in Commissioned Officer Corps for Purposes of Certain Hiring Decisions.

This section amends 33 U.S.C. 3071 to define that an officer who has served in the commissioned officer corps for at least three years be deemed in a career or career-conditional position. An officer will therefore be qualified to apply for positions limited to individuals currently employed within the Administration.

Section 233: Direct Hire Authority.

This section allows for the direct hire of a NOAA corps officer, up to five years after leaving the service, into the Federal workforce. To be considered, the officer must have met the service obligation defined in section 216 and have been discharged under conditions other than dishonorable.

Subtitle C. Appointments and Promotion of Officers

Section 241: Appointments.

This section amends 33 U.S.C. 3021 to authorize officers to be commissioned from the following sources: officer training school; military service academies; and licensed officers of the merchant marine with at least two years of service on a U.S. vessel.

The NOAA Corps would like to implement a new retention tool to allow officers to temporarily separate and pursue personnel goals (like starting a family) or other opportunities outside the service, while providing a mechanism for their return to active duty. This section allows for officers to be reappointed at the same grade they held when they separated from the NOAA Corps.

Finally, this section requires the Secretary of Commerce to coordinate with the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating to promote inter-service transfers of officers and would give preference to inter-service transfers in recruiting new NOAA Corps officers, as appropriate.

Section 242: Personnel Boards.

This section amends 33 U.S.C. 3022 to specify that the membership of personnel boards may include officers serving in or above the grade of the officers under consideration by the board, and may include recalled, retired officers.

The current law does not allow retired or active officers below the pay grade of commander to serve on personnel boards, and makes it very difficult to form personnel boards, due to the Corps' inherent small size. This helps to ensure the diversity of the boards.

Section 243: Delegation of Authority.

This section requires the President to delegate authority for appointments and promotions to the Deputy Secretary of Commerce or NOAA Administrator for periods when the position of Secretary of Commerce is vacant.

Section 244: Assistant Administrator of the Office of the Marine and Aviation Operations.

This section amends 33 U.S.C. 3028 to modify that the position of the Director for the Office of Marine and Aviation Operations shall carry the title of Assistant Administrator to be consistent with the other NOAA line offices. The Office of Marine and Aviation Operations is responsible for the oversight of the vessel and aircraft fleets and for the administration of the commissioned officer corps.

Section 245: Temporary Appointments.

This section amends 33 U.S.C. 3029 to establish a mechanism for junior officers to be temporarily appointed by the President alone.

Section 246: Officer Candidates.

This section amends NOAA Corps Act of 2002 to authorize the Secretary to create an officer candidate rank for individuals who are in training before receiving their commission.

Currently, officers entering the NOAA Corps for initial training are directly commissioned as officers (Ensigns) on their first day. All other services have a period where the individual is an 'officer candidate' before receiving a commission. This section gives NOAA the authority to create an 'officer candidate' rank, with reduced pay. **This would result in savings of approximately \$115K annually, which could be used to pay for officer precommissioning and education programs established elsewhere in this bill**

Section 247: Procurement of Personnel.

This section adds a provision to the NOAA Corps Act of 2002 to authorize the Secretary to make expenditures in order to recruit NOAA Corps officers.

Subtitle D. Separation and Retirement of Officers**Section 251: Involuntary Retirement or Separation.**

This section amends 33 U.S.C. 3041 to enable deferral of involuntary retirement or separation due to medical conditions for officers of any rank. Currently, the NOAA Corps can defer involuntary separation of Lieutenant Commanders and below but it cannot for Commanders and Captains.

Section 252: Separation Pay.

This section amends 33 U.S.C. 3042 to clarify that separation pay may not be paid to an officer discharged after two missed promotion opportunities if he or she is not genuinely seeking a promotion.

Title III. Hydrographic Services**Section 301: Reauthorization of Hydrographic Services Improvement Act of 1998.**

This section would reauthorize the Hydrographic Services Improvement Act of 1998 through fiscal year 2020. The bill would use \$5 million and \$2 million of the authorized appropriations for Arctic hydrographic surveys and continental shelf delineation, respectively. It would limit administrative expenses associated with contract management to not more than 5 percent.